

Local Government Bill Reform Proposal

An analysis of the Local Government Bill reform proposal and some options for Council's consideration

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Reform 1 – Voter Franchise

Option A

Yarra City Council supports this proposed reform.

Option B

Yarra City Council supports this proposed reform, without the transitional arrangements for 2020, and with the reform taking effect in full from 2024.

While the reform is described as simplifying the electoral franchise, in reality it does not remove the voting entitlement of any of the current franchise. What it does do however, is remove the 'automatic' inclusion of non-resident property owners from the electoral roll, and requires that they first apply for enrolment in the same way that business owners and some property lessees currently do.

Aside from the administrative efficiency brought about by this change, this reform has the potential to lead to other benefits, including:

- An opportunity to simplify the communication with voters regarding their obligation to vote, as all voters in receipt of a ballot paper will now be required to vote.
- A reduction in the likelihood of voter fraud caused by postal ballots being sent to managing agents and returned en mass, as was experienced in the City of Melbourne in 2016.
- The placement of all non-resident voters on equal footing, as non-resident property owners are brought into line with corporations, business tenants and owner occupiers who are no on the electoral roll.
- Removal of the cumbersome process required to ensure a voter is accurately listed when they are an owner of multiple properties across different wards.

That said, the proposal to progressively implement the change over 2020 and 2024 by requiring only new non-resident property owners to apply to vote in 2020 runs a very real risk of compromising the reform, by sending a confusing message about who is required to register in 2020, and who is required to vote. In 2024, this problem will continue, as many long term property owners will see the communication about the need to register to vote and assume it doesn't apply to them, on the basis that it didn't apply in 2020.

It is the view of the Yarra City Council that while the reform is welcomed, the transitional arrangements are unnecessarily confusing and potentially compromise the reform. If the reform cannot be implemented in full by 2020, then they should be placed on hold and implemented ahead of the 2024 election.

Option C

Yarra City Council does not support this proposed reform.

While the reform is described as simplifying the electoral franchise, it actually makes no change – everyone who can vote today will be able to vote following the reform. What the reform does do is introduce another step in the process for the large number of property owners who do not appear on the State Electoral Roll. While this largely includes non-resident property owners, it also includes a significant number of Yarra owner occupiers who are not Australia Citizens. In fact, in the City of Yarra there were 16,176 such voters at the 2016 elections.

Any reform of the voter franchise should aim to enfranchise, rather than disenfranchise, local residents and ratepayers. The introduction of additional steps only serves to place barriers in the way of those wishing to exercise their democratic right and will certainly reduce the number of formal votes cast overall. Further, increasing the number of people who can register to vote at each election, particularly in a municipality like Yarra with a great deal of investor owned property, makes it likely that the number of voters in each ward will fall well outside the 10% variance tolerance on election day.

If simplification is the aim of this reform, then the Yarra City Council would support the compulsory enrolment of all residents and ratepayers, and introduction of compulsory voting across the board.

Yarra City Council does not support the requirement for non-resident ratepayers to apply to be on the electoral roll.

Reform 2 – Electoral Structures

Option A

Yarra City Council supports this proposed reform.

Option B

Yarra City Council does not support this proposed reform.

Respecting communities

The history of ward structures is illustrative in that from their establishment in the mid 19th century, Victorian Councils were almost universally comprised of either multi-member wards or un-subdivided municipalities. In fact, it was only on the passage of the 1989 Local Government Act that single member wards became legislatively possible. For this whole period, communities had been successfully and effectively represented by their Councils.

Then, in the largest attack on local democracy in Victoria's history, the Kennett government launched a reform program which amalgamated local governments, stripped away elected Councillors and appointed Commissioners who were not accountable to local communities.

At the time of these reforms, just one of Victoria's over 200 Councils had been made up of Councillors from single member wards. There had simply been no demand for it. The Commissioners took a different view and began a dramatic move to single member wards and the preferential voting that came with it. In fact, by 1998 almost 70% of all Councils included single member wards.

Over the following years, a comprehensive program of Electoral Representation Reviews was rolled out across the state, with the Victorian Electoral Commission mounting an extensive program of community consultation and engagement to determine the best electoral structure for each municipality. This program returned a voice to local communities and found that they (and many Councils themselves) did not feel well served by single member wards. By the time of the 2016 elections, only 8 of 79 Councils were made up entirely of single member wards - a rate of just 10%. In fact, had the Minister not overturned the recommendation of the VEC in the Shire of Yarra Ranges, the number would have been just seven.

It is puzzling why the proposed reform would want to return to the Kennett era and reinstate a model largely put in place by unelected Commissioners and resoundingly rejected by local communities in successive electoral representation reviews. This proposal is simply not respectful to the wishes of local communities.

Recent experience

While history shows a community desire for different electoral models, it is not necessary to go back to the 1990s to identify the downsides of mandatory single-member wards.

The current experience shows that single member wards often do not produce the same level of democratic engagement and participation as is found in different electoral structures, and do not give a voice to those holding significant minority views in local communities.

By way of example, if you look at the four neighbouring municipalities of Banyule, Boroondara, Darebin and Yarra and examine the outcomes of the 2016 election, the differences between these elections becomes clear. These figures are taken from the VEC website results for 2016:

	Banyule	Boroondara	Darebin	Yarra
Structure (wards x vacancy per ward)	7 x 1	9 x 1	3 x 3	3 x 3
Voting method	Attendance	Postal	Postal	Attendance
Counting method	Preferential	Preferential	PR-STV	PR-STV
Candidates per vacancy	2.7	3.3	6.7	3.6
Candidates per election	2.7	3.3	20.1	10.8
Uncontested elections	2 of 7	1 of 9	0 of 9	0 of 9
% electors without chance to vote *	27.0 %	9.5 %	0.0 %	0.0 %
% primary vote recipients elected **	51 %	48 %	48 %	64 %
% votes electing a Councillor ***	61 %	57 %	81 %	76 %

* *This figure represents the proportion of voters located in an uncontested ward.*

** *This figure is derived by taking the total of the primary votes received by each successful candidate, and dividing it the total number of formal votes cast. It represents the proportion of voters who saw their first preference candidate get elected.*

*** *This figure is derived by taking the total number of votes allocated to each successful candidate at the time of election and dividing it by the number of formal votes cast. It represents the proportion of formal voters whose vote played a role in the election of a Councillor.*

In short, when compared to single member wards, multi-member wards have:

- Higher numbers of candidates competing for each vacancy
- Higher number of candidates to choose from on each ballot paper
- Fewer uncontested elections
- Fewer constituents who don't get a chance to vote
- A higher chance that a voter's first preference will be elected
- A greater proportion of voters playing a part in the election of a Councillor

Perhaps the most telling figure is looking at the uncontested elections across Victoria at the 2016 elections.

In all, there were 192 different elections at those elections (one in each ward). Of the 99 single member elections, 33 had to be abandoned because they were uncontested, with Councillors appointed unopposed. This represents a failure rate of one third. In the 159 multi-member elections, this happened only 5 times, a failure rate of just 3%. In short, elections in single-member wards are more than ten times as likely to fail as their multi-member counterparts.

Of the eight entirely single-member Councils in 2016, only one (Nillumbik) managed to have a contested election for every seat. In fact the failure rate for these Councils was so high, that three Councils (Loddon, Murrindindi and Pyrenees) now have a majority of Councillors who were appointed unopposed. Presented with these facts, it is hard to argue that single-member Council wards deliver meaningful local democracy.

Listening to the experts

Yarra City Council is not alone in its opposition to mandatory single-member wards, with the overwhelming view of the sector being that a range of electoral structures should be available to ensure the Council effectively represents its community.

The first time the issue was comprehensively addressed since the 1989 Act was the Local Government Electoral Review Panel's July 2014 report *Local Government Electoral Review Volume 2*. This report recommended "the discontinuation of the current practice of having 'mixed wards', where municipalities contain a mix of single-member wards and multi-member wards or a mix of non-uniform multi-member wards" but continued to support multi-member wards where it best serves the community.

The Exposure Draft Local Government Bill 2018 (and all the position and discussion papers that lead to it) gave effect to this recommendation, and continued to provide a legislative avenue for Councils where, as a result of an independent representation review, it was found that multi-member wards best served the community. Yarra city Council supported this approach.

Of those Councils that addressed the issue of electoral structures through this process, the overwhelming majority supported local communities having the option of multi-member wards. In fact, our analysis cannot find one Council who argued ahead of the development of the 2018 bill that single member wards should be mandatory across the state.

Most recently, the reform paper that is the subject of this submission. This paper acknowledges that single member wards are not suitable for every community – carving out exemptions for small, rural Councils as well as for the City of Melbourne. In stating that sometimes it "is impractical to subdivide a council into wards", the reform paper acknowledges that one size simply cannot fit all.

Arguments that cannot be supported

The reform paper and accompanying FAQs make an attempt to prosecute the case for single-member wards. These arguments require scrutiny.

"Single member wards for each council enable residents to more effectively receive direct representation"

In the event that constituents do not share like views with their ward councillor, this representation can be difficult at best. In multi-member elections determined by a PR-STV counting method, it is much more likely that significant minorities will successfully elect a Councillor to represent them. This is evidenced by the experience of the sector, which finds that constituents have no trouble seeking out representation when required – including from Councillors from other wards. Arguably, constituents "more effectively receive direct representation" from a Councillor who shares their views. A diversity of opinion is much more valuable than a diversity of location.

"Councillors will be more accountable to local communities"

In preferential counting methods, there is little electoral incentive for Councillors to be accountable to minority communities. Unlike the PR-STV method, where a significant majority of votes influence the outcome, preferential counts require only a slim majority to be successful. In local government multi-member wards, where there are no group voting tickets, there is no such thing as a 'safe' seat.

“Consistent application of this model also ensures that all councillors are elected under the same system with equal vote shares within their council”

The 2018 bill proposed the elimination of Councils with a mixture of single-member and multi-member wards, and Yarra City Council supports this initiative. This too achieves the objective of equal vote shares with a council.

“This more closely reflects the way members of Parliament are elected”

Why is this desirable? What about members of the Legislative Council? Local government is different to the Victorian Parliament, and there are few parallels between the two. There does not seem to any argument advanced as to why the voting method for the lower house of the bi-cameral Victorian Parliament should be automatically applied to local councils. Notably, Councils have no mechanism akin to the Legislative Council where significant minority voices can be heard.

“Single member wards are the best way to ensure representation is genuinely local”

As there is no compulsion that candidates hold a voting entitlement in the ward they seek to represent, the notion of a Councillor being ‘local’ is an entirely artificial construct. That it is possible to successfully define communities with lines on a map capturing equal number of electors within a narrow margin of error is plainly fraught.

Yarra City Council does not support the mandatory application of single-member wards.

Reform 3A – Training for candidates

Option A

Yarra City Council supports this proposed reform.

Option B

Yarra City Council supports this proposed reform, conditional on the training program being flexibly delivered either online or at a range of locations and times; requiring a time commitment by candidates of no greater than four hours; and being delivered in a way that meets the needs of people with disabilities and those from non-English speaking backgrounds.

Unfortunately, aside from a commitment that the sector will be consulted before the training is prescribed in Regulations, there is little clarity about the form of training, or how onerous it would be. Further, the reform paper states that “the level of training required will be carefully balanced against the need to not create an unnecessary barrier to participation” without explaining how this balance might be struck.

The Yarra City Council is particularly concerned that in order not to provide an unnecessary barrier to participation, any training must:

- require only a short time commitment (to a maximum of four hours);
- be delivered at a range of locations, dates and times, and possibly online;
- be designed to respond to the needs of people with disabilities; and
- be delivered in multiple languages, or with language support for people from non-English speaking backgrounds.

On the basis that all of the above matters form the basis of the training program, Yarra City Council supports this proposed reform.

Option C

Yarra City Council does not support this proposed reform.

Yarra City Council is concerned that this proposal engages the human rights of constituents by placing a limitation on their ability to stand for election. The fundamental right to take part in public life by standing for public office is placed under threat for little benefit – there seems no evidence that providing training to candidates (rather than Councillors) will better equip them to assume office.

The proposal to give the Victorian Electoral Commission the authority to reject nominations from candidates who cannot demonstrate that they have undertaken relevant training compromises the ability of the VEC itself to undertake a fair and impartial elections. Further, if the training is competency-based (as it would undoubtedly have to be if it is to be meaningful), the program’s designers and assessors may find themselves open to accusations of bias, as they alone determine the standard accepted to ‘pass’ and the elements of training warranting assessment.

Lastly, from a purely practical point of view, the training would have to occur before the opening of nominations. This means that either the timeline of elections will need to be adjusted, or that candidates will need to be permitted to attend training despite not being on the electoral roll at the time. Neither is desirable, as it requires candidates to make a decision to stand much earlier than is currently the case.

Yarra City Council does not support the introduction of mandatory training for candidates.

Reform 3B – Training for councillors

Option A

Yarra City Council supports this proposed reform.

Option B

Yarra City Council supports this proposed reform, conditional on the Chief Executive Officer having responsibility for designing the program.

Councillor induction training is a long standing feature of the process for introducing new and returning Councillors to Yarra after each election. Typically, the program includes a number of high level sessions focussing on the role of Councillors and the Council's overarching governance responsibilities, as well as a number of targeted sessions in specific portfolio areas, such as budgeting, planning, corporate communications and others. On occasion, the programs may include some more general team-building activities.

The nature and extent of the program is designed to ensure it meets the individual needs of Councillors as well as the collective needs of the group. By necessity, this means that some sessions are targeted at Councillors with limited experience, and are less relevant for Councillors who are returning for a second or subsequent term. Any mandatory induction program would need to recognise this distinction, and allow that not all of the offered training sessions or modules should be included in the mandatory program.

On the basis that the program can continue to be determined by the Chief Executive Officer, and can be delivered in a way that is flexible enough to meet the different needs of each Councillor, then the City of Yarra supports this reform.

Option C

Yarra City Council does not support this proposed reform.

Councillor induction training is a long standing feature of the process for introducing new and returning Councillors to Yarra after each election. Typically, the program includes a number of high level sessions focussing on the role of Councillors and the Council's overarching governance responsibilities, as well as a number of targeted sessions in specific portfolio areas, such as budgeting, planning, corporate communications and others. On occasion, the programs may include some more general team-building activities.

The nature and extent of the program is designed to ensure it meets the individual needs of Councillors as well as the collective needs of the group. By necessity, this means that some sessions are targeted at Councillors with limited experience, and are less relevant for Councillors who are returning for a second or subsequent term. Similarly, some Councillors may have specific technical skill gaps that need to be addressed.

The reform proposal appears to propose that a one size fits all model of induction training be rolled out, not only across one Council but, through Regulation, across the entire local government sector. It seems that this will inevitably lead to a 'lowest common denominator' training program which, while covering the basics of compliance and legal obligations, is unlikely to do much to equip Councillors for the unique challenges facing their community. Further, the existence of this 'tick the box' training program is likely to undercut the induction and professional development program

already established at Yarra and the majority of Councils – suggesting that once the standard training is completed, nothing more need be done.

A number of other issues of concerns have been identified with the reform as put forward:

- A requirement to undertake induction training for just one Councillor following a casual vacancy is potentially onerous.
- No consideration appears to have been given to dealing with Councillors who are on an approved leave of absence (such as parental leave) and would be unable to undertake the training within the six month timeframe.
- There does not seem to be any explanation for why the identified consequence of not completing the training would be withholding a Councillor allowance. If a Councillor has failed to undertake training and has been publicly punished through the withholding of their allowance, there is a real risk that their continued presence in the Chamber could undermine the community's confidence in the Council.

Yarra City Council does not support the introduction of mandatory training for councillors.

Reform 4 – Donation Reform

Option A

Yarra City Council supports this proposed reform.

Option B

Yarra City Council does not support this proposed reform.

The proposed reform as presented is problematic in implementation and arguably subject to abuse without forensic accounting to track the source of each donation.

Complicating matters, as the extent of donations is much lower in the local government sector than is found at other levels of government, it is still commonplace for the majority of candidates to fund their campaign personally. As a result of this, candidates who have greater personal means at their disposal have a distinct advantage in standing for Council. The proposed reform does nothing to correct this structural discrimination and arguably makes it worse, by limiting the donations that can be accepted by candidates without the same disposable personal wealth.

Other issues identified in the proposed reforms as presented are:

- Unlike in Victorian Parliamentary elections, voters in Council elections are not required to be Australian citizens or resident in Australia. As a result, stifling democratic participation by preventing campaign donations from all non-Australians appears contradictory with this entitlement. If it is desired that such a limitation be established, it would be desirable to include an exception for those people appearing on the electoral roll.
- Many community groups and some small businesses operate without an ABN. The proposed reform makes no provision for how donations from these groups would be treated. Further, the existence of an ABN does little to demonstrate that a business is not overseas owned and controlled.
- The reform as described will lower the gift disclosure threshold for all gifts, not just those that are election campaign donations. This will have the unintended effect of requiring Councillors to publicly declare many gifts received in a personal capacity. It would also prevent Councillors from accepting anonymous gifts over the threshold value if participating in personal fundraising.

Yarra City Council does not support the proposed restrictions on campaign donations.

Reform 5 – Improved Conduct

Option A

Yarra City Council supports this proposed reform.

Option B

Yarra City Council does not support this proposed reform.

While the moving of Councillor Conduct principles from legislation to regulation is of little consequence, altering the way Councillor behaviour is addressed in the way proposed has the effect of escalating complaints to the Principal Councillor Conduct Registrar far earlier than would otherwise be the case. What is described as an internal arbitration process (but is in effect an external process) is potentially costly and time consuming and is not suitable for low level disputes between colleagues.

In reality, most Councils will establish a process to be implemented before the proposed internal arbitration process is triggered – consisting of counselling and mediation as required. This process (perhaps to be known as the ‘really internal arbitration process’) will essentially replace the arbitration processes currently included in Councillor Codes of Conduct – meaning this new reform will, in essence, add an additional layer of process to an already drawn out and unnecessarily complicated process.

Yarra City Council does not support the establishment of internal arbitration processes.

Reform 6 – Community Accountability

Option A

Yarra City Council supports this proposed reform.

Option B

Yarra City Council supports the proposed mechanism for Councillor disqualification upon two findings of serious misconduct, but does not support a Community Initiated Commission of Enquiry.

Yarra City Council supports the dismissal of a Councillor upon a second finding of serious misconduct which has been the independent finding of a Councillor Conduct Panel.

The proposal to establish a Community Initiated Commission of Enquiry as a result of a community petition is not supported as it is not well thought out and is potentially very damaging to the reputation and community confidence in the Councillors and the Council as a whole. Seemingly modelled on the process used for a 'recall' election in a number of international jurisdictions (notably the USA), the process differs in that it does not require a majority to succeed, and even if it is successful, it simply triggers an enquiry seeking to investigate poor governance in a Council.

Further, unlike a recall election, where the process delivers a clear community outcome, the suggested process provides a mechanism for a minority of the community to upset the smooth operation of a Council. It is not difficult to imagine a scenario where a carefully considered Council decision is challenged through this process by a minority opposition. This process would be very damaging indeed, even if a resultant enquiry found no evidence of poor governance.

The process described is, in Council's view, unworkable insofar as it requires the collection of (in Yarra's case) almost 20,000 signatures within a 60 day period. While in extreme circumstances, it is possible to imagine that this could occur, it is hard to see how the resultant petition could then be evaluated against the voter's roll to determine whether it meets the standard required to trigger an enquiry. This would certainly be a time consuming and potentially very costly process.

Yarra City Council does not support the establishment of community initiated Commissions of Enquiry.

Option C

Yarra City Council does not support this proposed reform.

The dismissal of a Councillor upon two findings of serious misconduct over an eight year period is, in Council's view, excessive. This penalty further creates an incentive for colleagues of a Councillor with one find against them to trigger a further panel with a view to removing them from office. It can be expected that this process will lead to an increased number of Councillor Conduct Panels.

The proposal to establish a Community Initiated Commission of Enquiry as a result of a community petition is not supported as it is not well thought out and is potentially very damaging to the reputation and community confidence in the Councillors and the Council as a whole. Seemingly modelled on the process used for a 'recall' election in a number of international jurisdictions (notably the USA), the process differs in that it does not require a majority to succeed, and even if it is successful, it simply triggers an enquiry seeking to investigate poor governance in a Council.

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Yarra City Council does not support the dismissal of Councillors upon a second finding of serious misconduct or the establishment of community initiated Commissions of Enquiry.